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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Federal-State Joint Board on
Universal Service

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CC Docket No. 96-45

**JOINT COMMENTS OF THE AMERICAN ASSOCIATION OF COMMUNITY
COLLEGES AND THE ASSOCIATION OF COMMUNITY COLLEGE TRUSTEES**

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December 19, 1996

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SUMMARY

The American Association of Community Colleges ("AACC") and the Association of Community College Trustees ("ACCT"), collectively referred to as the "Joint Commenters," submit this pleading to ensure that the rules promulgated under Section 254 of the Telecommunications Act of 1996 (the "TCA"): (1) achieve Congress' directive to enhance public school and library access to core telecommunications and advanced services; and (2) do not inadvertently exclude community colleges from the benefits of Congress' universal service initiatives.

The Joint Commenters commend the efforts of the Joint Board as a significant advancement in ensuring that our country's schools and libraries are equipped to educate in the 21st century. However, in promulgating its universal service rules, the Commission should recognize that community colleges qualify for universal support on a number of bases, independent of the specific definitions set forth in Section 254(h)(5) of the TCA. Specifically, it should make federal universal service support available to community colleges under Section 254(h)(5) of the TCA to the extent they provide K-12 instruction, or under Section 254(h)(3) to the extent they can be classified as low income consumers of telecommunications services, and/or high cost consumers. Similarly, community college libraries should be eligible for discounts under Section 254(h)(4) federal universal service support mechanisms.

There are various aspects of the Joint Board's Recommended Decision that require further clarification or analysis by the Commission. For instance, the Commission should explicitly provide that providers of advanced services need not also provide "core" services to be eligible for reimbursement or set-off from the universal service fund, and that schools and

libraries are not prevented from taking service from specialized companies (*e.g.* companies that offer *only* Internet access or inside wiring services) in circumstances where the companies do not necessarily offer eligible services to schools or libraries at the lowest rate. In addition, the Commission must make plain that providers of core services, Internet access and inside wiring services should not be permitted to submit only "bundled" bids when competing for school and library contracts. The Commission also should adopt the Joint Board's recommendation that the geographic area served by a particular carrier for purposes of providing service to schools and libraries is the area in which the service provider is seeking to serve customers, *e.g.* the cable operator's franchise area or the wireless company's service area.

In adopting competitive bidding rules for school, library and health care provider contracts, the Commission must ensure that the bidding process recognizes quality and reliability differences among services and service providers. Accordingly, schools and libraries should be afforded the flexibility to choose to take service from providers that do not necessarily submit the lowest bid. The Commission also must make plain that schools and libraries that already have entered into contracts for telecommunications services with certain providers will be permitted to benefit from the new rules by adopting a "fresh look" requirement.

To the extent that the Commission would require community colleges to certify that the telecommunications services will be used exclusively for the purpose of providing health care instruction, it is critical that the Commission's universal service rules not require that community colleges obtain duplicative facilities to provide the instruction. Moreover, Federal universal service rules should not prevent community colleges located in non-rural areas from benefiting

from universal service support if they provide health care instruction to rural areas via distance learning capabilities.

Finally, the Commission should confirm that if a community college subscribes to a particular telecommunications or advanced service to make library resources available to K-12 schools, or to provide courses to K-12 students either on or off campus, it should be provided a universal service discount to the extent that the benefits run directly to eligible secondary schools. Records maintained regarding the use of shared facilities will ensure that unrelated uses of the facilities are not subsidized.

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COLLEGES AND THE ASSOCIATION OF COMMUNITY COLLEGE TRUSTEES**

The American Association of Community Colleges ("AACC") and the Association of Community College Trustees ("ACCT"), by their attorneys, hereby submits these joint comments in response to the recommendations made by the Federal-State Joint Board on Universal Service to the Federal Communications Commission (the "Commission") on November 7, 1996.^{1/} AACC and ACCT, collectively referred to as the "Joint Commenters," submit this pleading to ensure that the rules promulgated under Section 254 of the Telecommunications Act of 1996 (the "TCA"): (1) achieve Congress' directive to enhance public school and library access to core telecommunications and advanced services; and (2) do not inadvertently exclude community colleges from the benefits of Congress' universal service initiatives.

^{1/} See *Public Notice*, "Common Carrier Bureau Seeks Comment on Universal Service Recommended Decision," DA 96-1891 (rel. November 18, 1996); *Order*, CC Docket No. 96-45 (rel. December 11, 1996) (extending comment date to December 19, 1996); *Recommended Decision*, Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (rel. November 8, 1996) ("*Recommended Decision*").

I. Background

The AACC has been helping to meet the challenges faced by community colleges for over seventy-five years. Since its inception, the AACC has been a prominent force in defining national issues important to its 1,114 members, working to effect positive policy decisions and speaking out on behalf of community colleges to key organizations, agencies and the media. Similarly, ACCT represents over 6,000 elected or appointed officials who govern community, technical and junior colleges in the United States and Canada. It is the responsibility of these governing officials to assure that their institutions have the capacity and resources to offer the programs and services necessary to meet the educational needs of their communities. It is based on the critical responsibilities shared by these organizations that the Joint Commenters have urged, and will continue to urge, the Commission to address directly the concerns and issues identified herein.^{2/}

Community colleges have experienced considerable growth in enrollment as communities increasingly value the essential learning and thinking skills these unique institutions furnish their traditional and non-traditional students. The national network of community colleges today numbers over 1,100 institutions, found in every state and virtually every Congressional District. In 1992, these colleges enrolled 5.7 million credit students, another five million non-credit students, and accounted for 44 percent of the Nation's undergraduates and 49 percent of all first-time freshmen. These institutions play an increasingly

^{2/} See also Joint Comments of the American Association of Community Colleges and the Association of Community College Trustees, CC Docket No. 96-45 (filed April 12, 1996); Joint Reply Comments of the American Association of Community Colleges and the Association of Community College Trustees, CC Docket No. 96-45 (filed May 8, 1996); *Ex Parte* Presentation, CC Docket No. 96-35 (filed October 23, 1996).

vital role in educating the nation's existing and future workforce. It is within this context that the Commission must interpret its universal service mandate.

II. Introduction

The Joint Commenters commend the efforts of the Joint Board as a significant advancement in ensuring that our country's schools and libraries are equipped to educate in the 21st century. Indeed, the definitions, funding and disbursement mechanisms, and standards for participation in the universal service fund which have emerged from federal-state cooperative efforts, if adopted, will secure school and library access to basic telecommunications services, as well as "advanced" services. In particular, the Joint Board's recommendations regarding financial support for rural health care services providers and educational consortia will encourage information sharing and broad access to instructional materials and resources. The recommendations also will facilitate the expansion of distance learning programs, thereby providing equality of opportunities and relief from the isolation felt by large portions of our nation's rural populations.

Nevertheless, Congress' universal service goals will be achieved only if the Commission's rules reflect how educational services are actually delivered in the United States. The rules, therefore, must be sufficiently flexible to provide support to educational institutions and libraries that are serving basic educational functions or that face significant costs of procuring telecommunications and advanced services because of their location, mission and function and/or unique financial circumstances. Accordingly, the Commission's universal service rules should apply to community colleges under Section 254(h)(5) to the extent they provide K-12 instruction, or under Section 254(h)(3) to the extent they can be classified as low income

consumers of telecommunications services, and/or high cost consumers. Similarly, community college libraries should be eligible for discounts under Section 254(h)(4) federal universal service support mechanisms.

While this position was presented previously to the Joint Board in the Joint Commenters' prior filings, the Petitioners' recommendations were not expressly addressed in the Recommended Decision. Unless provision is made for service discounts and other universal support for community colleges, these entities are likely to find themselves to be the only educational institutions unable to achieve the connections required to provide a competitive education. Consistent with President Clinton's recognition that a K-14 education has become the minimum threshold for a basic education, the Commission must do all it can to ensure that community colleges alone are not excluded from the benefits of its universal service rules.

III. The Commission Should Adopt Rules That Make Universal Service Support Available to Community Colleges.

Under the Telecommunications Act, Congress provided specific definitions for "schools" and "libraries" to identify the beneficiaries of federal universal service support.^{3/} These definitions, however, do not prevent the Commission from interpreting its broader Congressional mandate under other portions of Section 254 in a manner that also serves the nation's educational goals and, more generally, the public interest. Indeed, the Commission should and can expressly recognize that community colleges qualify for universal support on a number of bases, independent of the specific definitions set forth in Section 254(h)(5) of the TCA.

^{3/} See 47 U.S.C. § 254(h)(5).

A. Universal Service Support Mechanisms Should Include Community Colleges Based on the Nature of Their Educational Activities and Mission Statements.

Community colleges are public institutions serving a variety of students. In addition, they focus on teaching, not research, and their telecommunications needs more often closely resemble those of K-12 schools than they do those of four-year colleges and universities. The Commission, therefore, should make universal support mechanisms available to community colleges to the extent they are utilized in teaching programs focusing on basic educational skills.

Community colleges have addressed the critical growing demand for remedial education, English as a second language and workplace literacy programs.^{4/} Indeed, community colleges play a vital role in educating "non-traditional" students, instructing in reading, writing and mathematics. In 1992, for instance, 96 percent of community colleges provided workforce training programs for business and industry employers in their communities, including programs in workforce literacy.^{5/} In addition, community colleges throughout the country regularly offer key science and math courses for those preparing for their high school equivalency General Education Degree ("GED") through their adult basic education programs.

^{4/} See Address by Louis V. Gerstner, Chairman and CEO, IBM, 1996 National Education Summit at 2 and 4 (delivered March 26, 1996) ("*Gerstner*") (recognizing statistics indicating that public schools are failing to provide their students with basic english, math and science skills, e.g., sixty percent of the students entering the California State University System are required to take remedial courses in math and science; poor literacy costs American businesses \$25 to \$30 billion a year in lost productivity, errors and accidents).

^{5/} Significantly, worksite literacy is one educational arena where the special attributes of two-year colleges have been well utilized. Program administrators have capitalized on the strong ties between community colleges and the local business community and on the proven experience of community colleges to design effective literacy and basic skills programming.

Illinois Central College, for instance, has approximately 600 students enrolled in GED courses and operates an "alternative high school" with an enrollment of about 100 students. The majority of the cost of delivery of these courses is shouldered currently by external grants. William Rainey Harper College, located in Palatine, Illinois, has a comprehensive GED preparation program that serves approximately 785 students each year, offering instruction on campus or at specific business and industry sites. Likewise, Burlington County College, located in Pemberton, New Jersey provides training and testing for the GED through its community services department and Waubonsee Community College, located in Sugar Grove, Illinois, served 700 GED students in 1995. Similarly, Oakton Community College, located in Des Plaines, Illinois has had a very strong involvement in the activities of students seeking to earn high school diplomas through its "Evening High School" and "Sunshine High" programs. These are just a few, of many, examples of community colleges that provide basic educational training to their communities.

To continue serving the needs of non-traditional students, and to reach social and economic communities that traditionally have been under-served, community colleges must have access to affordable telecommunications services. Permitting community colleges to obtain discounts on core and advanced telecommunications by focusing eligibility on the nature of the educational services provided will ensure that all Americans are afforded the instructional benefits that new technologies can bring. Moreover, at a time of tremendous growth in distance learning for non-traditional adult students, community colleges must have access to affordable telecommunications and advanced services if they are to respond to emerging educational needs that are unaffected by geographic boundaries and economic circumstances.

B. Eligibility for Universal Service Support Should Include Community Colleges As Low Income Users of Telecommunications Services.

Totally apart from the specific educational institution eligibility of the TCA, Section 254(b)(3) expressly added "low-income" to the list of users to whom access to telecommunications and information services should be provided under the Commission's universal services rules.^{6/} The Joint Commenters urge the Commission to adopt rules that reflect the fact that many community colleges are "low-income consumers" of telecommunications services that should be included in the federal and state models for universal service. Indeed, the FCC's universal service rules for low-income consumers should include community colleges.^{7/}

Community colleges, by and large, operate on severely limited budgets, without the benefit of major endowments, generous alumni campaigns or corporate underwriting enjoyed by many senior institutions. Many have tremendous difficulty affording advanced telecommunications services at commercial rates, including the types of advanced services that have been identified as potentially among the "core" services eligible for universal service support, e.g. Internet access availability, data transmission capability, optional Signaling System Seven features or blocking of such features, enhanced services and broadband services.^{8/} Unless

^{6/} See *Conference Report, Joint Explanatory Statement of the Committee of Conference, Telecommunications Act of 1996* at 131 (January 2, 1996) (the "Conference Report").

^{7/} Both the Telecommunications Act and its legislative history make plain that Congress intended to include low-income "consumers" as a class of telecommunications service users eligible for universal service support. This classification can and should include universal support for the provision of telecommunications and information services to community colleges.

^{8/} See *Notice of Proposed Rulemaking, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45 (rel. March 8, 1995) at ¶ 23 (the "Notice"). See also *Conference Report* at 133.

support is available for the provision of these core services, a significant number of community colleges will be unable to absorb the significant costs associated with making these services available to their students.

There is substantial evidence substantiating the inability of community colleges to absorb the high costs of obtaining telecommunications and advanced services. The experience of St. Charles County Community College located in St. Peters, Missouri, for example, demonstrates the types of educational opportunities that are lost each day by community colleges because of funding constraints. In an effort to provide classes to high school students located at a vocational school approximately 50 miles from the College's campus, St. Charles has been planning to participate in seven school districts to create a consortium for distance learning. Through the consortium, college level classes would be offered to high school students and continuing education classes to adults in the area.

To date, the project has not been approved because of the excessive monthly charges that must be incurred to cover the distance between St. Charles' campus and the participating schools. Indeed, the lowest quotes of \$1800 per month from the three telephone companies that cover the relevant geographic area simply are too high to make the program cost-efficient or practicable.^{9/} Consequently, schools in rural areas that need the distance learning interactive classrooms the most are left unserved and their educational needs unmet.

^{9/} Currently, Parkland College, located in Champagne, Illinois pays \$50,000 per year for five video lines and \$15,000 per year for a T-1 Internet line to support the provision of its distance learning courses. While services and connections generally are made available by local carriers, the absence of an educational rate tier makes the costs of telecommunications particularly high.

To address this financial inability, the Commission should adopt a regulatory model for universal service that would make core and advanced telecommunications services available to undercapitalized educational institutions, such as community colleges, at discounted rates. Supporting the provision of core and advanced telecommunications services to these institutions will further Congress' universal service goals for low-income consumers of telecommunications services in both rural and urban areas of the United States and help address the growing concern that in the information age we increasingly are becoming "a Nation of educated and uneducated."^{10/}

C. Universal Service Support Rules Should Benefit Community Colleges in Rural, Insular and High Cost Areas of the Country.

Pursuant to Section 254(b)(3) of the Telecommunications Act, the Commission's universal service rules must ensure that consumers in rural, insular and high cost areas have access to telecommunications and information services, including advanced telecommunications services. The Commission should permit educational institutions that face distinct challenges based on their geographic location to benefit from universal service discounts and other mechanisms intended to bring new technologies to rural and high cost areas.

Community colleges located in rural and insular (and high-cost) areas face disproportionately high costs of obtaining basic telecommunications service, and even higher costs for access to more advanced telecommunications services. Many telecommunications services, such as Internet access, involve expensive long-distance connections that effectively bar these institutions from access to the information superhighway. The Illinois Central College,

^{10/} Gerstner at 3.

for instance, has identified the cost of transmission as the biggest roadblock in using interactive video technologies to provide instruction to students in local school districts. In many distance learning networks, the costs of linking various facilities are prohibitively high because community colleges and local school districts must negotiate with numerous telephone companies that provide service in distinct areas. The present financial and regulatory challenges that face educators and service providers make the delivery of instruction to distant sites problematic, and many times impossible.^{11/}

Moreover, rural counties depend heavily on their community colleges for educational opportunity, economic development and access to informational resources. Yet, they are far less able than their urban counterparts to dedicate local tax funds to, and garner private support for, their community colleges. Universal service mechanisms made available to these community colleges on the basis of their being low income and/or rural, insular or high cost area consumers will provide new opportunities for education and training for communities traditionally excluded from the benefits of technology, including access to distant information and educational resources. For those individuals who find themselves financially unable to obtain access on their own to telecommunications and information services, even with traditional universal service support, the availability of such services at nearby community colleges offers an important and

^{11/} According to the Metropolitan Community College, a comprehensive four campus community college district in Kansas City, Missouri, rates quoted by smaller rural telephone companies can run several times those provided by large telecommunications companies. For instance, rural companies may charge as much as \$25,000-\$30,000 per year for a single T-1 connection while a local carrier in an urban area would provide the same services for \$5,000-\$8,000 per year. Moreover, many do not provide educational discounts, if they respond to requests for service at all. The Commission's rules must provide all schools, libraries and health care providers meaningful access to broadband telecommunications networks that can transmit voice, video and data communications, and particularly in rural areas.

publicly beneficial alternative. In particular, telecommunications facilities are crucial to individuals residing in areas in which transportation, distance or economics are barriers to attending on-campus training and courses.

D. Universal Service Initiatives Should Support Libraries Located At And Funded By Community Colleges.

Pursuant to Section 254(h)(4), a library is not entitled to preferential rates or treatment in obtaining advanced telecommunications services made available to "schools, libraries and health care providers" under the TCA unless it is eligible for participation in State-based plans for funds under Title III of the Library Services and Construction Act.^{12/} The Joint Commenters urge the Commission to interpret this provision to make universal service preferences available to community colleges whose libraries serve the public and perform the same functions in cooperation with or as a substitute for those traditionally associated with public libraries.

Higher education institutions, particularly community colleges and especially in rural areas, provide the same service to the public as "public libraries" and, therefore, should be eligible for universal service support in providing the public access to their facilities. It has been noted that community colleges are becoming the "conveners of civic life." Rural colleges and universities often have the only well-equipped auditoria or the teleconferencing facilities in their counties. In this information age, they must be connected to all segments of society and the economy.

Moreover, Section 353 of the Public Library Services and Construction Act ("Library Act") provides that a state may make subgrants to library systems or networks that include

^{12/} See TCA § 254(h)(4).

libraries other than public libraries if the purpose of the subgrant is to improve services for public library patrons.^{13/} In addition, states are permitted to offer grants to other "types of libraries" in instances where there is interlibrary cooperation and resource sharing with or among public libraries.^{14/} The Commission's universal service rules should reflect this same flexibility by permitting community college libraries to benefit from federal universal support mechanisms when they: (1) make available to the general public, directly or indirectly, their on-campus collections and facilities for the benefit of "traditional" public library patrons; and/or (2) make their collections available to public libraries through resource sharing or other cooperative arrangements.

For purposes of making federal universal service support available to "community" libraries located on community college campuses, the Commission should establish objective criteria to determine whether public library patrons are or will be served by community college library resources and facilities, such as the issuance of library cards to non-students and faculty. Under such circumstances, the Commission should extend the benefits of universal service discounts to community college libraries that serve the broader community or that otherwise contribute to the services provided by public libraries within their communities.

^{13/} See The Public Library Services and Construction Act, Section 353 (amended 1990) ("In carrying out its program to accomplish the purposes of this subchapter, a State may make subgrants to library systems or networks which include libraries other than public libraries, if the purpose of the subgrant is to improve services for public library patrons."); *see also* 34 C.F.R. § 770.2(b)(2).

^{14/} See 47 C.F.R. § 770.2(b)(3).

IV. To the Extent the Commission Adopts the Joint Board's Recommendations, It Must Promulgate Detailed Rules to Ensure That Schools and Libraries Understand Their Responsibilities and Obtain Universal Services in an Efficient and Cost-Effective Manner.

While the Joint Commenters support many of the recommendations made by the Joint Board on November 7, there are various aspects of the Recommended Decision that require further clarification or analysis by the Commission. The issues addressed below involve ambiguities in the Recommended Decision that must be clarified to ensure that schools and libraries enjoy the full benefit of Congress's universal service mandate.

A. Choice of Carriers

Consistent with many of the comments received last spring, the Joint Board recommends that universal service support be made available to schools and libraries for service offerings other than those identified as "core" telecommunications services pursuant to Section 254(c)(1) of the TCA. Specifically, the Board recommends that discounts be provided for Internet access as well as intra-school and intra-library connections (*e.g.*, inside wiring).^{15/}

Should the Commission adopt these recommendations, the Joint Commenters request that the Commission explicitly provide that providers of these additional services need not also provide "core" services to be eligible for reimbursement or set-off from the universal service fund. As indicated by the Joint Board, the "special" services made available to schools and libraries pursuant to Section 254(c)(3) and 254(h)(1)(B) of the Telecommunications Act are distinct from the telecommunications services that comprise "core" services.^{16/} Providers of

^{15/} See *Recommended Decision* at ¶¶ 462-65 and 473-484.

^{16/} See *Recommended Decision* at ¶ 444 ("in its consideration of 'additional' services . . . , Congress authorized the Commission to specify a distinct definition of universal

these additional services, therefore, should not be required to provide core services to establish eligibility to draw from the universal service fund.^{17/} Moreover, as discussed further in Section IV.B. below, it is critical that schools and libraries not be prevented from taking service from specialized companies (*e.g.* companies that offer *only* Internet access or inside wiring services) even in circumstances where the companies do not necessarily offer eligible services to schools or libraries "at the lowest rate."^{18/}

This interpretation of the statute is consistent with the Joint Board's recommendations^{19/} and will permit schools and libraries to obtain Internet access and wiring services from carriers that do not necessarily offer telecommunications services along with advanced services, *e.g.*, Internet access providers. Indeed, it will give schools and libraries the ability to choose services and service providers that best suit their needs.^{20/} This bifurcated approach also will ensure that the \$2.25 billion available annually for schools and libraries is utilized in an efficient manner.

In addition, the Commission should make plain that competitive bidding for schools and library contracts for these "advanced" services is distinct from any process for competitive

service that would apply only to public institutional telecommunications users. The conferees stated that they expected 'the Commission and the Joint Board to take into account the particular needs of . . . K-12 schools and libraries'").

^{17/} See *Recommended Decision* at ¶ 544 ("there is no reason to exclude carriers who do not provide core services, if they can offer eligible services to a school or library at the lowest rate").

^{18/} See *Recommended Decision* at ¶ 543-44.

^{19/} See *Recommended Decision* at ¶ 544.

^{20/} See *Recommended Decision* at ¶ 538 (recognizing that evidence suggests that wireless service providers can offer the best prices to 27 percent of all schools and that cable television wires currently pass over 90% of homes nationwide).

bidding that may be applied to the provision of core services. Specifically, providers of core services, Internet access and inside wiring services should not be permitted to submit only "bundled" bids when competing for school and library contracts. Permitting such bundling, without a requirement to submit independent bids for particular services, will restrict the meaningful choice of schools and libraries to take service from those entities that may more efficiently provide advanced services (*e.g.*, wireless providers, cable operators).^{21/}

Accordingly, schools, libraries and health care providers should be permitted to decide the elements of the bid package. Pursuant to such a rule, Local Exchange Providers ("LECs") would not be permitted to present schools and libraries with an "all-or -nothing" bundled bid in an attempt to win schools and library contracts for the provision of both core and advanced services. In addition, the Commission's competitive bidding rules should reduce the need for schools and libraries to negotiate independently with multiple telephone companies for their core telecommunications and advanced services. Specifically, the needs of schools and libraries should be addressed in a comprehensive, rather than piece-meal, fashion where the bids are tailored to the needs of the institution based on its request for proposal ("RFP").

Finally, the Joint Commenters support the Joint Board's recommendation that the geographic area served by a particular carrier for purposes of providing service to schools and libraries is the area in which the service provider is seeking to serve customers, *e.g.* the cable operator's franchise area or the wireless company's service area.^{22/} This interpretation will create

^{21/} To date, only a relatively small percentage of schools and libraries take services from wireless providers, *e.g.* wireless Internet, or cable operators, *e.g.* analog video through franchising agreements.

^{22/} See *Recommended Decision* at ¶ 543.

meaningful opportunities for new service providers to gain economic footholds in new markets. It also will prevent the unnecessary exclusion of new entrants that are unable to provide services throughout an incumbent LEC's entire service area.^{23/}

B. Competitive Bidding

The Joint Board recommends that service providers competitively bid for contracts with schools and libraries based on its determination that efficient use of the universal service support system will occur if market-based techniques and procedures are implemented.^{24/} Schools and libraries, therefore, would be required to submit their requests for services to the fund administrator, who would then post a description of the services on a website for all providers of services to see and respond to as if they were RFPs.

Pursuant to this process, entities would bid to provide service to a particular school or library, but would be limited in the prices they could submit for consideration. For instance, prices charged to similarly situated non-residential customers for similar services (the "lowest corresponding price") would constitute a ceiling on the pre-discount price offered to schools and libraries. It is uncertain, however, whether this bidding process would recognize quality differences among services and service providers. Indeed, if quality differences are not accommodated in the bidding process, the competitive bidding scheme could potentially limit the ability of certain high-quality services providers from successfully competing for school and

^{23/} See e.g., *Recommended Decision* at ¶ 543 (recognizing that an expansive definition would hinder small telephone companies, cable operators and wireless service providers if they are forced to serve schools or libraries outside their markets).

^{24/} See *Recommended Decision* at ¶ 538.

library contracts. The recommendations also do not expressly provide that schools and libraries have the discretion to take service from entities that do not submit the lowest bids.

It is critical that schools and libraries be offered the flexibility to choose to take service from providers that do not necessarily submit the lowest bid. Quality concerns must be recognized in the competitive bidding process to ensure that schools are not relegated to take service from unreliable carriers simply because they outbid competitors. A school may not want to pay the lowest price, but may prefer a higher price that includes training and/or equipment. Similarly, providing this flexibility will permit new entrants to compete in a context where incumbents may face lower cost structures which allow them to underbid consistently carriers that seek to serve the needs of schools and libraries through the implementation of new technologies.

The Commission also must make plain that schools and libraries that already have entered into contracts for telecommunications services with certain providers will be permitted to benefit from the new rules by adopting a "fresh look" requirement. This would require carriers that already have entered into contracts with schools and libraries to participate in the competitive bidding process to ensure that their customers benefit from lower rates that become newly available.^{25/}

^{25/} See e.g., *First Report and Order*, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 96-98; CC Docket No. 95-185 (rel. August 8, 1996).

While the Joint Board indicates that discounts adopted in this proceeding will be applied to contracts negotiated prior to the adoption of rules under Section 254(h),^{26/} the recommendation does not provide schools and libraries the ability to consider the offerings of competing carriers.^{27/} The implementation of Section 254(h)(2), however, mandates that the Commission establish "competitively neutral" rules for accessing advanced telecommunications services and information services by schools and libraries. Consequently, the Commission should provide all carriers and service providers a renewed ability to compete for school and library contracts, based on the revised federal universal service rules.

C. Health Care Providers in Rural Areas

Under Section 254 of the TCA, public and non-profit health care providers that serve persons residing within a state may receive telecommunications services necessary for the provision of health care services at rates that are reasonably comparable to urban rates for similar services. "Health care providers" are statutorily defined to include post-secondary educational institutions offering health care instruction.^{28/} Moreover, the Joint Board has recommended that community colleges that offer health care instruction be able to obtain supported services where:

(1) the institution's officers certify that the telecommunications services would be used

^{26/} See *Recommended Decision* at ¶ 571.

^{27/} To date, many schools and libraries have entered into agreements with their local exchange services providers for core and advanced telecommunications services. With the anticipated expansion of the parties eligible to participate in the universal service fund, and a corresponding increase in those entities paying into the fund, it is critical that schools and libraries be permitted to benefit from newly subsidized service offerings *and* service providers.

^{28/} See 47 U.S.C. §254(h)(5)(B).

exclusively for purposes reasonably related to the provision of health care instruction; and (2) the health care provider is legally authorized to provide such instruction in that state.^{29/}

To the extent that the Commission would require community colleges to certify that the telecommunications services will be used exclusively for the purpose of providing health care instruction, it is critical that the Commission's universal service rules not require that community colleges obtain duplicative facilities to provide the instruction. For instance, if telecommunications or advanced services are used to provide health care instruction *and* to support other educational activities, the Commission's rules must permit certifications that accommodate discounts on shared lines. Discounts on multi-purpose lines will ensure that costs to schools and libraries are not unintentionally elevated and that they are not forced to "over-subscribe" to telecommunications and advanced services to benefit from federal universal service mechanisms. Records of use can be used to prevent fraud or other opportunities for misappropriation of universal service funds.^{30/}

Finally, the Commission's rules should not prevent community colleges located in non-rural areas from benefiting from universal service support if they provide health care instruction to rural areas via distance learning capabilities. Section 254(h)(1)(A) defines eligibility for support to include any health care provider that "serves persons who reside in rural areas in that state." In interpreting this provision, the Joint Board recommends that eligibility to obtain

^{29/} See *Recommended Decision* at ¶ 712 (emphasis added).

^{30/} Such record-keeping was found by the Joint Board to be sufficient to combat fraud in the consortia context and likewise would prevent ineligible entities from misappropriating funds under the Commission's newly-established universal service support mechanisms. See *Recommended Decision* at ¶¶ 594-96.

telecommunications services at rates reasonably comparable to rates in the state's urban areas be limited to providers located in rural areas.^{31/} In regard to community colleges, it is critical that the Commission make access to universal service support available to institutions that educate in rural areas, but are not necessarily located in rural areas. Failure to do so will necessarily limit the number of rural communities that would otherwise receive improved health care delivery and instruction.^{32/} Indeed, it is the very need for affordable telecommunications services to support distance learning capabilities that require that community colleges that serve rural areas not be forced to pay elevated prices to deliver educational programming or to provide interactive instruction.

D. Consortia Rules

Under the Recommended Decision, the Joint Board has expressed concern about the "commingling of purchases" and the potential violation of the resale provision that may result.^{33/} To guard against abuse, the Joint Board recommends that service providers keep and retain careful records of how they allocated the costs of shared facilities in order to charge eligible schools and libraries the appropriate amounts.^{34/} The Joint Commenters agree with this approach

^{31/} See *Recommended Decision* at ¶ 703.

^{32/} If such a limitation were put in place, Metropolitan Community College would find it increasingly difficult to continue the distance learning nursing education program that it established approximately three years ago. While T-1 or fractional T-1 lines have been sufficient for the delivery of interactive instruction to date, the need for services that provide greater bandwidth will remain unsatisfied due to the high costs of more sophisticated services. The availability of discounts to support such programs is invaluable to the development of specialized programming that meets expressed needs in rural health care instruction.

^{33/} See *Recommended Decision* at ¶¶ 594-96.

^{34/} See *Recommended Decision* at ¶¶ 594-96.